

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Crl. A. No. 49/1996

% Date of Decision : 21.10.2009

SHIV KUMARI ... ..APPELLANT  
Through : Mr. N.R. Varghese and  
Ms. Tessy Verghese,  
Advocates.

- V E R S U S -

STATE ... ..RESPONDENT  
Through : Mr. Sunil Sharma,  
Advocate.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

SANJAY KISHAN KAUL, J. (ORAL)

1. *"Hell hath no fury as a woman scorned"* – the suspicions of the wife about her husband's character and the perceived affection of her husband for another woman has resulted in a crime in the present case. The appellant has been convicted for murder under Section 302 of the Indian Penal Code, 1860 (for short, 'IPC') of her husband and sister-in-law and under Section 307 of the IPC for

attempt to commit murder of her son and daughter – all as a consequence of her belief that her husband was having an affair with his cousin and his consequent behaviour with the appellant.

2. The appellant was married to one Shiv Kumar alias Sukumaran (deceased) and from the wedlock were born a boy and a girl, namely, Sanjeev and Seema. The family was residing at D – 80, Karampura, New Delhi where the sister of the deceased, namely, Chandrika was also residing. The case of the prosecution is that the appellant suspected an affair of her husband with his cousin Shobhna, who was living as a tenant in House No. C – 125, New Moti Nagar, New Delhi. The appellant was naturally offended and there were quarrels between husband and wife as a consequence thereof. On the fateful night preceding 10.10.1990, Sukumaran is alleged to have returned home late, at which the appellant protested resulting in altercation between the appellant and her husband. Sukumaran is alleged to have remarked in anger that he would set on fire all the members of his family. The anger seemed to have subsided, but kept on burning in the heart of the appellant. Sukumaran was sleeping in the inner room while the two children and Chandrika slept on a double-bed in the outer room where the appellant was sleeping on the floor. At about 4.30 a.m. on 10.10.1990, the

appellant is alleged to have smashed the head of Chandrika with a 'moosli' (cylindrical bar of iron used for crushing spices). This moosli was also used to cause injuries on the head of her son and daughter whereafter she assaulted her husband and finally hit herself on the head.

3. The episode is stated to have been witnessed by a next-door neighbour, namely, Smt. Anita when she heard the cries of the daughter of the appellant and rushed to the flat, but found it bolted from inside. A second neighbour, Ram Kishore Shukla is stated to have joined in the effort to open the door and it is the husband of Smt. Anita, namely, Ram Lakhan who informed the PCR. DD Entry No. 67/B was made at about 4.50 a.m. by SI Prakash Chand, who along with SI Sukhdev Singh went to D – 80, Karampura, New Delhi to investigate the crime. On the site visit, SI Prakash Chand found that blood was spread all over with Chandrika, the son and the daughter lying in injured condition in the inner room. The appellant was lying in a semi-conscious state and her husband was lying in a pool of blood in the inner room. In the meantime, information had been sent to CMO, ESI Hospital and the ambulance carried Sukumaran to the said hospital where he was declared brought-dead. The two children along with Chandrika and the appellant were taken in the PCR van to DDU Hospital where

Chandrika was declared brought-dead, while the other injured were referred to RML Hospital. Fortunately, both the children survived. At P.S. Moti Nagar, information was recorded vide DD No. 67/B that a woman had murdered her two children and the SHO along with an SI rushed to the spot. The statement of Smt. Anita was recorded and sent to the police station for registration of the FIR. The trial court on filing of the charge-sheet framed charges against the appellant and the appellant pleaded not guilty and claimed trial.

4. The prosecution examined 44 witnesses. Some of them are formal in nature. The two eye-witnesses, Smt. Anita and Ram Kishore Shukla were material witnesses, but unfortunately Smt. Anita expired during trial and could not be examined. Her husband Ram Lakhan was, however, examined as PW – 30, who testified that his wife had told him that the appellant had murdered her husband and children and he informed the PCR van. The most material witness for the case of the prosecution is Ram Kishore Shukla, PW – 25. He deposed that while he was sleeping in the cot in the gallery outside the room, he was awakened by the sound of knocking of the door and found Smt. Anita, who informed him of the cries she had heard from the house of the appellant. On this, PW – 25 woke up and watched through a window from where he could see some light in the room. He saw the

appellant striking on the bed with something in her hand. The endeavour of PW – 25 and Smt. Anita to knock and persuade the appellant to open the door was not successful. Some other persons are stated to have come to the site and the door had to be kicked open whereupon they saw the gory sight. The appellant was found striking her own head with the moosli. The moosli was snatched by PW – 25.

5. We may note at this stage that the son and the daughter, i.e., PW – 34 and PW – 35 respectively, who were injured in the occurrence and survived, deposed that they did not know how they had received the injuries and, thus, were declared hostile. The motive of extra-marital affair was sought to be established by Shoba Rani, PW – 18, the landlady of the cousin Shobhna of the husband of the appellant and their neighbour, Thimpy, PW – 24, but they also turned hostile though PW – 18 did admit that the deceased Sukumaran used to come in the evening to see Shobhna and he used to stay up to 9.30 p.m. or 10.00 p.m. The real brother of the deceased Sukumaran, namely, Surindaram, PW – 9 deposed that Sukumaran and his family were living happily and that Chandrika had been brought to Delhi by the appellant herself. The post-mortem on the bodies of Sukumaran and Chandrika was done by Dr. L.K. Barua, PW – 28, who examined the weapon of offence being the

moosli and expressed the opinion that fatal injuries could be caused by that weapon.

6. In the statement under Section 313 of the Code of Criminal Procedure (for short, 'Cr.P.C.'), the appellant sought to set up a different story. She denied having caused any injury to her family members and claimed that the injuries may have been caused by some unknown burglars as her husband was lending money against pledge of gold ornaments. She claimed that the money and ornaments were missing and that what she was wearing herself as also what was worn by Chandrika and her daughter were not found on the persons. She explained the incident by claiming that she got up at 4.00 a.m. on 10.10.1990 to go to the toilet outside since there was no attached toilet, but did not put any latch. On her return after 10 or 12 minutes, she found three persons standing there and before she could raise an alarm, she was hit on the head with a heavy substance. She also produced one witness in her support being one of her colleagues, who has testified to normal relationship between the husband and the wife.
7. A perusal of the impugned judgment shows that the conviction is based on the circumstances of the case along with the testimony of the eye-witness, PW – 25, who was examined. We have perused the impugned

judgment and the trial court record and have heard the submissions of learned counsel for the parties.

8. The plea of learned counsel for the appellant is predicated on the motive not having been established. It is pleaded that the prosecution has rested its case on a presumption of an illicit relationship between the deceased husband Sukumaran with his cousin Shobhna and the eye-witness account of PW – 25. Learned counsel seeks to take advantage of the children having turned hostile as also the landlady Sobha Rani of the cousin Shobhna. It is further pleaded that there was no reason why the sister-in-law Chandrika or the children should have been attacked by the appellant if she had a grievance against her husband about any illicit relationship. The brother of the deceased, PW – 9, has also deposed to the parties having living a happy life. Learned counsel also sought to throw doubt on the case of the prosecution by alleging that the moosli was a foot long and weighing two kgs. and could not have been used by the appellant. In case there was an altercation, there was no reason to suggest as to why the appellant would wait four to five hours before attacking her husband. Learned counsel, in addition, seeks to read into the testimony of PW – 25 an averment that Anita had told him that the appellant opened the door when they were knocking while, on the other hand, he has

claimed that the door had to be forced open along with other persons (who were not examined). Anita had passed away and, thus, her version was not available. An additional plea raised is that PW – 25 was enimical towards the family of the appellant and that the theory of burglary as proposed by the appellant was a plausible one and, thus, the benefit of doubt should, in any case, go to the appellant.

9. We, however, find none of the aforesaid arguments sustainable. The impugned judgment has dealt with all the issues in a crisp and lucid manner. The question is not whether the deceased husband of the appellant was having an extra-marital relation with her cousin Shobhna, but whether the appellant suspected such an extra-marital relationship. No doubt, the evidence towards this motive is weak as the children had become hostile when they appeared in the Court. Simultaneously, the theory sought to be propounded by learned counsel for the appellant of any past enimical relationship between her deceased husband and PW – 25 is belied by the testimony of the daughter herself, who has denied such acrimony. PW – 25 has withstood cross-examination and has, in fact, stated that he had only once visited the house of the appellant. PW – 18, the landlady while not sticking by her original story as recorded in the statement under Section 161 of the

Cr.P.C. has conceded in the cross-examination that Sukumaran did used to visit Shobhna and stayed on till as late 9.30 p.m. / 10.00 p.m. This statement was not challenged on behalf of the appellant. The trial court has, thus, rightly noticed that such late arrival may have created a suspicion in the mind of the appellant. This, however, cannot be the basis of the conviction of the appellant and the most material aspect is the testimony of PW – 25, who had no axe to grind with the appellant.

10. The trial court in para 18 of the impugned judgment has discussed the aspect of the testimony of PW – 25, his ability to observe what was transpiring in the house of the appellant by reference to the site-plan (Exhibit PW – 44/A) and the scaled site-plan (Exhibit PW – 22/A) and came to the conclusion that the window in the flat of the appellant opening towards the common gallery would give clear view to PW – 25, who was sleeping in the common gallery. The night bulb in the room has been noted in the site-plan and the appellant striking her own head was witnessed by PW – 25 when the door was broken open and the complete gory sight was observed. The photographs of the site (Exhibit PW – 23/12 & 13) show half uprooted latch of the main entrance, which are in line with the testimony of PW – 25 that the door was forced open. The plea of learned counsel for the appellant that PW – 25 had deposed that the appellant

had opened the door on the asking of Anita is not a correct reading of the testimony. PW – 25 has deposed that Anita was asking the appellant to open the door. The phrase used is, “*Seema Ki Mumi, Darwaza Kholo*”. Thus, the reference was to the mother of Seema (daughter) asking the appellant to open the door and not that she opened the door. This testimony is also against the very premise of the statement made by the appellant under Section 313 of the Cr.P.C. that she had left that door open. If the door was open when she entered and saw three unknown persons standing, there was no occasion for the door to be closed from inside. The injury caused to the appellant as per the MLC (Exhibit PW – 39/C) is contrary to her claim that she was hit from behind. No sign of burglary was found at the spot.

11. Sometimes, a word can wound more than an act. Sukumaran coming back late and then threatening to erase his own family in a fit of anger seems to have caused an irreparable wound in the heart of the appellant, who took the extreme step of not only attacking her husband, but also her sister-in-law and her two children. Faced with what she had done, she tried to take her own life in the same way. The alternate story set up by the appellant is totally unbelievable on account of the circumstances discussed above and there is no

reason to doubt the eye-witness account of an independent witness PW – 25. There was no one else in the house other than the appellant and the two deceased relatives and the injured children. There is, thus, only one plausible theory as set up by the prosecution and proved by the eye-witness account of PW – 25, despite the endeavour of her family members to resile from the earlier statement to help her. The admitted evidence available as to what was said soon after the incident is available from the testimony of Dr. Y.K.S. Pundir, PW – 27, who was the CMO of ESI Hospital and where the appellant worked as a nurse. He has deposed that at 5.00 a.m., two persons came and informed him that an employee has caused hurt to her husband and others. The DD entry recorded on intimation is to the same effect of the appellant having committed murder of her family.

12. We, thus, find no reason to interfere with the impugned judgment of the trial court on merits. We may, however, note that the appellant seems to have completely over-reacted to a suspicion in her mind. She has suffered incarceration for more than eight and a half years and is now a retired lady having some medical problems. Her sentence was suspended on 19.11.1999 whereafter she remained on bail till her failure to appear in appeal which resulted in NBWs being issued and she was finally

brought before this Court on 03.09.2009 and sent to judicial custody as the surety was not willing to be responsible for her presence in future.

13. The consequence of our order would, thus, be that the appellant would have to serve the remaining sentence after being out of custody for a decade, but then the Legislature gives us no option once the case falls within the parameters of Section 302 of the IPC, over which we have no doubt, insofar as causing death of the two deceased persons is concerned apart from her conviction under Section 307 of the IPC for causing injuries to her children.
14. The appeal is accordingly dismissed and the appellant to serve the remaining sentence.

SANJAY KISHAN KAUL, J.

October 21, 2009  
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AJIT BHARIHOKE, J.